

# Exhibit I

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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BMG RIGHTS MANAGEMENT (US) LLC, :  
et al., :  
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Plaintiffs, :  
 :  
vs. : Case No. 1:14-cv-1611  
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 :  
COX ENTERPRISES, INC., et al., :  
Defendants. :  
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VOLUME 1 (a.m. portion)

TRIAL TRANSCRIPT

December 2, 2015

Before: Liam O'Grady, USDC Judge

And a Jury

APPEARANCES:

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Pages  
223-25

1           The code for the Cox system that was provided to me  
2 includes both programs and some other configuration data those  
3 programs use. One piece of that information is called a black  
4 list. And it's a list of e-mail addresses that the system will  
5 reject, and that is to say not process. And what the Cox  
6 system does for an address that's on the black list is it  
7 deletes the e-mail and then takes no further action on it.

8           In the call that I reviewed in the files that I  
9 reviewed, the right Rightscorp e-mail that's used when it sends  
10 a copyright notice is on that black list. And so what that  
11 means is that the e-mail comes into Cox's server, but then the  
12 program that goes to read the e-mail off the server reads the  
13 header part, the to/from information on the e-mail. It checks  
14 it against the black list. It sees that Rightscorp is on the  
15 black list, so that e-mail is then just deleted and no further  
16 processing occurs for it.

17 BY MR. CARACAPPA:

18 Q. Ms. Frederiksen-Cross, we talked a little bit about this  
19 when going over your background, but maybe you can go into a  
20 little bit more detail about the materials you've considered in  
21 preparing your opinions in this case?

22 A. Oh, certainly.

23           When I was first involved in this case, I received  
24 some of the source code for the Rightscorp system. Subsequent  
25 to that, I received also some documents related to this case,

1 things like -- there's an exchange of information called  
2 interrogatories where each side asks the other questions and  
3 then their technical people answer or their business people,  
4 depending on the nature of the question, answer those questions  
5 and sometimes they attach documents that give the answer. And  
6 so I was provided those kind of documents to review as well,  
7 the questions that were asked of Cox and of Rightscorp by the  
8 opposing parties and the answers that were given.

9 I reviewed the Cox CATS system, which I actually  
10 traveled to a Cox facility to review. And then -- or to a  
11 facility where they were having the code hosted. And then I  
12 reviewed deposition testimony, which is the sworn testimony  
13 given by people who are witnesses that you may or may not see  
14 on the stand during the course of this trial, but they were  
15 witnesses that the parties agreed could be interviewed in this  
16 matter. And those were the principal pieces of data.

17 In addition to that then, I also requested and  
18 received at various times during my investigation some of the  
19 data that the Rightscorp system collects or some of the notices  
20 that it sends. You know, I would ask can I see a sample of two  
21 weeks' worth of data for a song or can I see a sample of  
22 notices or -- you know, at various times I was given different  
23 views into the data.

24 And then finally I did some of my own testing of  
25 BitTorrent clients and of Rightscorp's ability to detect the

1 activity that I was conducting when I was using BitTorrent  
2 to -- in this control test to do testing.

3 THE COURT: Mr. Caracappa, let's end our questioning  
4 for tonight. It's 5:30. I promised the jury I would let them  
5 go home at 5:30, and I think this is a good time to break in  
6 the testimony.

7 So, I'm going to excuse you for tonight. Very, very  
8 important that you go home and enjoy yourselves or listen to  
9 the news where you'll receive some really horrible news on some  
10 California shootings. But don't do any investigation. Don't  
11 discuss the testimony or the case with anybody else tonight.  
12 Don't do any research.

13 It causes -- it's a complete -- causes a complete  
14 breakdown of the judicial system if you don't decide this case  
15 based on what you hear in this courtroom and you instead do  
16 things on your own to -- to make your decisions. That defeats  
17 our whole system. So it's really important that you not do  
18 that.

19 The first thing tomorrow I'm going to ask you whether  
20 you had adhered to my order, and it's an order. You know,  
21 if -- I know you may have read about people who don't listen to  
22 the judge -- because every judge gives the same speech I'm  
23 giving you -- and have done something to pollute the entire  
24 proceeding. It causes mistrials; it costs lots of money,  
25 inconveniences. It subjects you to criminal penalties. It's a

Pages  
619-20



1 appreciate BMG working to get the witnesses here. Mr. Allan, I  
2 had a nice cell in the back of the courthouse ready for you.

3 MR. ALLAN: I am glad I didn't get to see it.

4 THE COURT: I knew Mr. Warin would designate you as  
5 the person to take responsibility.

6 MR. BUCKLEY: Your Honor, I hate to do this as you  
7 were about to escape, there is one more issue.

8 THE COURT: All right.

9 MR. BUCKLEY: So I just learned that we did get  
10 notice that the plaintiffs would like us to have Roger  
11 Vredenburg here on Monday. He does not fly or drive, so we are  
12 going to have somebody drive him from Virginia Beach up here on  
13 Sunday night, and I just want to make sure that we should do  
14 that and he is going to go on Monday.

15 THE COURT: He is subject to the subpoena power. He  
16 is a witness who, you know, BMG has the right to call live if  
17 they so choose. And I didn't find any technical issues that  
18 would rise to a level to quash it, so yes.

19 MR. BUCKLEY: Okay. He will be available Monday.  
20 Oh, and you did indicate that there should be a proffer of what  
21 the evidence was going to be through Mr. Vredenburg.

22 THE COURT: Why he was necessary. I mean, I think I  
23 know the answer based on listening to some of the deposition  
24 testimony that was actually used in Sikes, but tell me why  
25 Vredenburg isn't repetitive and unnecessary and counter-

1 balances the inconvenience.

2 MR. ALLAN: Sure. Your Honor, there are a number of  
3 documents he is on. He is -- we intend to talk to him about  
4 essentially the right and ability to control subscribers.  
5 That's what he does. He terminates and he suspends people.

6 And, you know, we are dealing with having to play --  
7 to put Cox witnesses in through discovery depositions. We  
8 should be entitled to examine a witness at trial and present  
9 this evidence this way.

10 Frankly, we don't think that the right and ability to  
11 control issue should really be an issue, but it still is, so we  
12 need to be able to present this testimony. He is the only Cox  
13 witness that is within the subpoena power.

14 THE COURT: All right. His testimony is going to be  
15 different than Sikes who was the overall supervisor and was --  
16 well, some of his e-mails were control type issues, right?

17 MR. ALLAN: That's right, Your Honor. But he also --  
18 I promise you he will not be very lengthy.

19 THE COURT: Okay. All right. Well, for the reasons  
20 I have said, I think it's appropriate to bring him up here.  
21 And hopefully it won't be too inconvenient for him. How old is  
22 he?

23 MR. BUCKLEY: 66.

24 THE COURT: Oh, he's a youngster.

25 MR. BUCKLEY: A baby, Your Honor.

Pages  
1055-58

W. Lehr - Direct

1055

1 resume?

2 A. Yes.

3 Q. All right. Karl, if I could draw your attention to the  
4 bottom of page 2 there?

5 Are those some of the courses?

6 A. Yes.

7 Q. Do they continue over onto page 3?

8 A. Yes.

9 Q. Have you done any work in connection with this lawsuit?

10 A. Yes.

11 Q. All right. What were you asked to do?

12 A. I was asked to provide economic analysis of a number of  
13 the issues of importance in this case, and more specifically, I  
14 was asked to opine or analyze three issues: first, to take a  
15 look at what the economics says about whether or not copyright  
16 holders suffer economic harm as a result of infringement; two,  
17 to take a look at what might be the incentives and economic  
18 impacts on Cox of tolerating infringement or acting so as to  
19 deter infringement; and three, looking at actually, you know,  
20 what the economic benefit -- to estimate the economic benefit  
21 to Cox of retaining and having subscribers on its network.

22 Q. All right. Are you giving any legal opinions concerning  
23 copyrights today or copyright infringement?

24 A. No.

25 Q. All right. What documents did you review in order to form

W. Lehr - Direct

1056

1 your opinions on those three issues you just listed?

2 A. Well, in addition to the materials I consider in the  
3 normal course of my research and work, I looked at a number of  
4 documents that were specific to this matter. Those included  
5 financial documents relating to the costs and revenues  
6 associated with different services that Cox offers, a number of  
7 other documents describing how Cox thinks about some of those  
8 services, a number of the depositions in this matter, and then  
9 some other research that, you know, I discovered and found  
10 useful in coming to the opinions I've come to.

11 Q. Did you read any general articles on Internet economics  
12 and the economics of copyright infringement on the Internet?

13 A. Yes. I mean, I read a lot of that kind of stuff in the  
14 normal course of my business, but I examined the literature on  
15 this topic quite extensively as part of the basis of  
16 formulating my opinions today.

17 Q. All right. Are you charging for your work on this case?

18 A. I am. I bill hourly at the rate of \$650 an hour.

19 Q. And approximately how many hours have you spent so far in  
20 getting -- preparing your report and getting ready for your  
21 testimony today?

22 A. Between 200 and 250 hours.

23 Q. All right. Is the payment of your fees in any way  
24 contingent on the outcome of this case?

25 A. No. I bill on an hourly basis, and whatever happens is

W. Lehr - Direct

1057

1 whatever happens.

2 Q. Were you able to form any opinions on those topics you  
3 were asked to research, namely, the economic impact that online  
4 copyright infringement has on copyright holders, to determine  
5 how much revenue and profit Cox makes from its residential  
6 high-speed Internet services, Cox's economic incentives, etc.,  
7 the ones you listed earlier?

8 A. Yes, I was.

9 MR. WARIN: All right. Your Honor, I would offer  
10 Dr. Lehr as an expert in the field of economics, Internet  
11 telecommunications, and media industries.

12 THE COURT: Any objection?

13 MR. BUCKLEY: No objection, Your Honor.

14 THE COURT: Proceed.

15 BY MR. WARIN:

16 Q. All right. Dr. Lehr, I'd like to walk you through a  
17 summary of the opinions or conclusions that you've reached.  
18 Have you prepared a slide that summarizes your opinions?

19 A. I have.

20 Q. All right. Karl, could we have that displayed, please?

21 All right. Is this the slide that you prepared that  
22 summarizes the three principal conclusions you've reached?

23 A. Yes, it is.

24 Q. Why don't you walk through somewhat briefly each of those  
25 and explain them to the jury, because we'll spend a little more

W. Lehr - Direct

1058

1 time going through each of these and ask you to explain the  
2 underlying basis for your conclusions. All right, let's start  
3 with this overall slide.

4 A. So, so the first opinion is that copyright infringement  
5 causes significant economic harm to copyright holders, and  
6 that's broadly supported by the economic literature, but  
7 because the economic literature includes a diversity of data  
8 sets and methods and all of that, it's not possible in the  
9 context of the literature to accurately estimate or come up  
10 with a single estimate of what that harm is for the industry,  
11 and it's impossible in the context of an individual rights  
12 holder.

13 Q. All right, that's your first conclusion. What's your  
14 second conclusion or opinion?

15 A. That subscribers to Cox are very valuable, and there's  
16 evidence that indicates that a number of Cox subscribers are  
17 infringing, and those subscribers are also very valuable, so  
18 that Cox is deriving significant financial economic benefit  
19 from having infringing subscribers on its network.

20 Q. And your third conclusion?

21 A. That in light of that second conclusion, if you look at  
22 the economic incentives that Cox has to tolerate infringement,  
23 they're substantial, and were it to take actions that would  
24 deter the infringement, that would actually -- that would be  
25 likely to disrupt their relationship with their subscribers,

Page  
1437



1 Team was following?

2 A. If there was the procedure, I wasn't aware of it. And I  
3 wasn't aware of the e-mail.

4 Q. Okay. So you weren't aware that they were telling each  
5 other DMCA equals reactivate?

6 A. I am certainly not aware of this e-mail, and I don't know  
7 anything about what you described.

8 Q. Fair enough. All right. Let's go to another one. Let's  
9 take a look at PX 2060. All right. 2060 is an e-mail from  
10 Andrea Dameri dated February 15, 2012.

11 Do you know who Andrea Dameri is?

12 A. No, sir.

13 Q. So she -- it says, "CCI-Virginia." What is that?

14 A. CCI-Virginia is a name used for some of our locations in  
15 Virginia.

16 Q. All right. And what is the CCI part?

17 A. Cox Communications.

18 Q. And you see here where Ms. Dameri says, "It seems that no  
19 one has let them know in SAN the DMCA terms are not really  
20 terminations any longer."

21 Do you see where it says that?

22 A. I do see that, yes.

23 Q. Okay. What is SAN?

24 A. That probably means San Diego.

25 Q. Okay. And Cox has a system there, right?

Pages  
1654-55

1 A. Yes. There are really four tasks that I was presented  
2 with, and I had prepared a slide that summarizes this.

3 So the first item is that I was asked to evaluate the  
4 analysis that was put forth by Dr. Bardwell. I was also asked  
5 to evaluate the analysis put forth by Dr. Lehr.

6 Q. Can I stop you for a second, Dr. Sullivan?

7 Can you just remind the jury who Dr. Bardwell and  
8 Dr. Lehr are, please.

9 A. Yes, certainly. So Dr. Bardwell is a statistician, and he  
10 put together what he claims to be a statistical model to  
11 determine the number of subscriber accounts associated with the  
12 infractions that have been alleged in the Rightscorp data.

13 Dr. Lehr is an economist who evaluated or looked at  
14 the effects of the alleged infringement on Cox.

15 Q. Sorry, I cut you off. Please continue what you were asked  
16 to do.

17 A. Sure. So the first two items was evaluating the work that  
18 each of those two individuals had performed. Items 3 and 4 --  
19 so item 3 was to determine and calculate what was the harm that  
20 would have been incurred by BMG as a result of the allegations  
21 that had been put forth here of alleged infringement.

22 Now when I do this analysis, I had been asked to do  
23 that under an assumption of liability. Effectively what that  
24 means is that when I perform that analysis, I don't evaluate  
25 whether there has been infringement or whether Cox would be

1     liable for that infringement. I am simply asked to assume that  
2     that is indeed the case so that then I can perform the  
3     calculations of, under that assumption, what would be the harm  
4     to BMG.

5             And then additionally, I have been asked under those  
6     very same assumptions to determine and calculate what would be  
7     the benefit to Cox as a result of the alleged infringement.

8     Q.    Okay. We are going to talk about each of these in some  
9     detail, but can you please summarize your evaluation of  
10    Dr. Bardwell's testimony.

11    A.    Yes. So at a very high level, he has constructed a  
12    statistical model that in my view is fundamentally flawed. It  
13    effectively assumes its conclusions by engineering the results  
14    that he obtained.

15    Q.    And can you please summarize your testimony or your  
16    evaluation of Dr. Lehr's testimony.

17    A.    Yes. In my view, Dr. Lehr's analysis is incorrect. I  
18    believe he has overstated the effect of the alleged  
19    infringement on Cox for a variety of reasons.

20    Q.    And can you please summarize your findings relating to the  
21    potential effects of alleged infringement on BMG in this case  
22    assuming Cox were found liable.

23    A.    Yes. So I have performed those calculations, and I have  
24    calculated two different numbers. The first is an estimate of  
25    an upper bound on lost revenues, and that amount is \$2,145,585.

Pages  
2000-5

2000

1 A. I was the one that founded the company. I ran it on a  
2 day-to-day basis. I had an office both in New Jersey and  
3 primarily in Prague.

4 Q. Dr. McGarty, have you got any teaching experience,  
5 higher-education teaching experience?

6 A. Yes, I was on the faculty of MIT from '69 through '75,  
7 faculty and research staff. I returned '89 to '91. And when I  
8 sold off my company in Europe, I returned pro bono from 2005 to  
9 2012.

10 I also was on the faculty at GW down here in  
11 Washington. I was on the faculty at the business school at  
12 Columbia where I taught telecommunications, finance, and  
13 policy. And I had a similar position at NYU Poly in New York  
14 in the early '90s.

15 MR. ALLAN: Thank you. Your Honor, at this point we  
16 would offer Dr. McGarty as an expert in the design and  
17 implementation of Internet telecommunications networks,  
18 including IP data networks in the operations of companies that  
19 use such networks.

20 THE COURT: Any objection?

21 MR. BUCKLEY: That seems a little broader than maybe  
22 what he spoke to, telecommunications generally. I take  
23 exception to the way it was described.

24 THE COURT: All right. I'll allow it. I think he  
25 has covered that much ground in the initial questions and

2001

1 through his resumé. Clearly he's been involved in a series of  
2 different areas surrounding the Internet and its building and  
3 structure. So I'll allow him to be qualified to give his  
4 opinion on those matters.

5 Thank you.

6 MR. ALLAN: Very good. Thank you, Your Honor.

7 BY MR. ALLAN: (Continuing)

8 Q. Dr. McGarty, could you tell the jury what you were asked  
9 to do in this case.

10 A. I was asked to do two general tasks. One was to examine  
11 Cox's CATS system for copyright infringement focus, not all of  
12 the parts of CATS system. And determine its capabilities with  
13 regards to dealing with copyright infringement notices.

14 And secondly, I was asked to specifically look at the  
15 operational and logistical capabilities of that system to  
16 handle Rightscorp infringement notices.

17 Q. Very good. And what types of materials did you look at in  
18 forming your opinion?

19 A. I had a wide variety of material that I looked at. I  
20 looked at depositions. I looked at operational documents that  
21 were provided to me through Cox, such as implementation plans,  
22 specific values associated with those implementation plans. I  
23 looked at e-mails.

24 I looked at interrogatories that were provided by  
25 Cox. And I also looked at some of the trial transcript for the

1 trial up through Mr. Carothers, I believe, last week.

2 Q. You've reviewed the trial transcript of this, in this  
3 case?

4 A. I did, yes.

5 Q. Very good. How about the AUP or the M&P?

6 A. I've looked also at a variety of other Cox material which  
7 included the AUP, which is the user policy that Cox has. I've  
8 looked at Cox Web sites and other material.

9 Q. Thank you. I would like you to flip in your book, if you  
10 could, to what should be the first tab, PX 1344.

11 A. 1344?

12 Q. 1344.

13 A. Okay.

14 Q. Are you with me?

15 A. I'm trying. I have 1343. Ah, I see it. Yes.

16 Q. Okay. Do you recognize this document?

17 A. Yeah, this -- yes, I do.

18 Q. And is this one of the technical documents you looked at  
19 provided by Cox?

20 A. Yes, it is.

21 MR. ALLAN: I would move this into evidence, Your  
22 Honor.

23 THE COURT: Any objection?

24 MR. BUCKLEY: Can we have a sidebar?

25 THE COURT: Yes, sir.



2003

1 MR. BUCKLEY: Actually, Your Honor, you know what, no  
2 objection.

3 THE COURT: Okay, it's received.

4 MR. ALLAN: Thank you, Your Honor.

5 BY MR. ALLAN: (Continuing)

6 Q. Dr. McGarty, tell us what this document is.

7 A. This document is entitled CATS Abuse Automation System  
8 Implementation Plan, and it is dated March 22, 2010. And this  
9 is an -- the way I read it, it's an implementation plan of what  
10 the CATS system should do.

11 I've written a lot of functional specifications in  
12 system documents, in requirements documents, and generally  
13 these are the things that you have that says, this is what your  
14 system should do and kind of how it should do it. It's not a  
15 coding document. It's a document that says, you know, if it  
16 does these things, then it's doing the right stuff per the  
17 document.

18 Q. And how did you use this document, Dr. McGarty, in forming  
19 your opinion?

20 A. Well, I examined the document to understand how the system  
21 is architected. And a lot of what I do is architecture work.  
22 I mean, I'm at the top level and I want to know what goes into  
23 what and what are the pieces.

24 So I used this document first to understand the  
25 architectural structure of the system, what are its components

2004

1 and elements, how they communicated with each other, what they  
2 were supposed to do as, for example, copyright infringement  
3 notices were sent to the system. And, you know, where was  
4 stuff stored and how did that storage kind of work and, you  
5 know, what were the operator terminals going to look at.

6 And this document provides at a fairly high but  
7 detailed level, in my opinion, a reasonable description of the  
8 system.

9 Q. Okay, thank you, Dr. McGarty. Could you summarize your  
10 opinions in this case for the jury.

11 A. Yes. Simply, the first opinion is with results to the  
12 Rightscorp infringement notices, I felt that this system, the  
13 CATS system for copyright infringement notices can reasonably  
14 in an operational and logistical manner be received and  
15 processed through the system.

16 The second opinion is that as I started to look  
17 through the system and the design here and then the  
18 specifications that they put in to make the design work,  
19 frankly, what happens is that the system looks like it's doing  
20 things, but what comes out the end is very little. The system  
21 as it gets configured by Cox may put a lot of stuff in, but  
22 nothing ever comes out the other end.

23 So the ultimate infringements are not fully and  
24 adequately processed.

25 Q. Okay. We'll talk about all that in detail in a moment.

2005

1           Before we get into the specifics of all that, did you  
2 arrive at an opinion as to whether Cox Communications and  
3 CoxCom can control infringement on their network?

4       A.    Yes, I did.

5       Q.    What is that opinion?

6       A.    Well, two parts. One is that Cox has an AUP, a user  
7 policy, and it seems to me fairly clear, which says, don't  
8 infringe on copyrights and, oh, by the way, if you do, we have  
9 the right to suspend you or terminate you or take some action  
10 if that infringement persists above a level. Okay.

11           So it on the surface says, we have the right to take  
12 action if you infringe.

13           The second part of it is that I was reading  
14 Mr. Vredenburg's testimony from last week, and they actually  
15 have the ability to do it with the push of a button.

16       Q.    What do you mean?

17       A.    So if there's somebody who is infringing, they just push  
18 the button, the AUP goes into the modem, and off they go.

19           So they have both the right and the ability to take  
20 action.

21       Q.    Thank you. I want to switch gears a little bit and talk  
22 about the Rightscorp notices.

23           What is your understanding of what Cox did with  
24 respect to the Rightscorp notices?

25       A.    My understanding from, you know, the various materials